

REMARKS

The Official Action of August 5, 2005 included two grounds of rejection:

(1) A rejection of the claims under 35 U.S.C. 103(a) as being unpatentable over a specified combination of references; and (2) a rejection under 35 U.S.C. 101 on the grounds of "double patenting" over applicants' prior US Patent 6,679,021.

It is believed that the original claims did not support either of the above two grounds of rejection. Nevertheless, minor amendments have been made to claims in order to more clearly support their allow ability under 35 U.S.C. 103(a) and 35 U.S.C. 101 respectively. The specification has also been amended in order to conform it the amendments made to the claims.

Favorable reconsideration of the application is therefore respectfully requested in the light of the foregoing amendments and the following remarks.

The Rejection under 35 U.S.C. 103(a)

The two independent claims, namely article Claim 1 and method Claim 20, were both rejected under 35 U.S.C. 103(a) as being unpatentable over Riefler US Patent 4,098,040 in view of Osborne US Patent 4,651,485 and Snitowski US Patent 4,802,318. It is submitted, however, that none of those references, whether taken singly or combination, disclosed or suggested the combination of features as defined in original Claims 1 and 20, and certainly not as defined in these claims as now amended.

Thus, Claim 1 as now amended defines a modular wall segment comprising two walling sheets of a selected two-dimensional shape and size; and a plurality of aerated concrete blocks contiguously located in a plurality of rows and columns between the two walling sheets; with each of the plurality of aerated blocks being bonded on its opposite

faces to the two walling sheets. Claim 20 is drawn to a method of making a wall segment by: applying a first layer of glue between a first walling sheet and a first surface of each of a plurality of contiguously-placed aerated concrete blocks arranged in a plurality of rows and columns; applying a second layer of glue between a second walling sheet and a second surface of each of the plurality of contiguously-placed aerated concrete blocks; and pressing the walling sheets against the plurality of aerated concrete blocks while the two layers of glue solidify. Riefler, relied upon as the primary reference in this rejection of the claims, discloses a concrete block panel of a completely different construction made by a completely different method. Thus, in Riefler, a plurality of solid concrete blocks (37, 39) are assembled into a panel, together with urethane blocks (38), reinforcing rods (52), and a concrete grout fill (53); and then the opposite side surfaces of the panel "are plastered with a cement fiberglass composition which seals the inner and outer surfaces of the panels" (Column 2, lines 27-39). These plastered surfaces, identified as 49 and 50 in Fig. 10, are disclosed as being spray-coated after the various blocks of the panel have been assembled e.g. column 3, lines 10-20. Clearly, such a method, and resulting structure, are both substantially different from the method and structure defined in method Claim 20 and article Claim 1, respectively, and do not provide the advantages of the novel article and method as described in the specification.

Moreover, the foregoing amendments made to Claims 1 and 20 even more sharply distinguish over this reference. Thus, Claims 1 and 20, as now amended, expressly define that each of the plurality of aerated concrete blocks is bonded on its opposite faces to the first and second walling sheets. This is to be sharply distinguished from Riefler wherein the spray-applied plastic layer 49 is applied to one face of one group of blocks

37, and the other spray-applied layer 50 is applied to one face of another group of blocks 39, and not to another face of the same group of blocks receiving the spray-applied layer 49. This is because the panel of Riefler is of a considerably more complicated construction, including polyurethane blocks 38, strengthening rods 52, concrete grout fill 53, etc. between the two face layers.

Osborne, US Patent 4,651,485, was relied upon as a secondary reference for a showing of using a preformed wallboard for each of the two plaster layers 49, 50 in Riefler. It is to be noted, however, that Osborne does not even relate to modular wall segments involved in the Riefler concrete block panel as well as in the concrete block panel defined in Claims 1 and 20 of the present application. Rather, Osborne relates to an interlocking building block system, in which the building blocks are formed with interlocking longitudinal surfaces. The Examiner presumably refers to exterior layer 50 illustrated in Osborne, but this layer is described as being an exterior sheathing to cover the outer surfaces of the interlocked building blocks. The surface is also provided after the building blocks have been applied in interlocking relationship, and certainly would not motivate one skilled in the art to make the two spray-applied outer surfaces 49 and 50 of Riefler in the form of pre-formed walling sheets, as defined in Claims 1 and 20 of the present application. Even if one skilled in the art were so motivated, such walling sheets would be applied after the concrete blocks had been assembled as in both Riefler and Osborne, rather than during the production of the concrete panel as defined in the claims.

Moreover, even if the exterior sheathing layer 50 in Osborne were used for the two spray-applied layers 49 and 50 in Riefler, this would still not meet the terms of article Claim 1 and method Claim 20, particularly as now amended, since both claims

now specify that each of the plurality of aerated concrete blocks is bonded on its opposite faces to the first and second walling sheets.

Snitowski, cited as a further secondary reference combined with Riefler and Osborne, apparently was relied upon merely for a showing of aerated concrete blocks. Applicants, however, do not claim any novelty in aerated concrete block, and in fact expressly acknowledge a large number of such concrete block constructions in the specification, for example in the definition of an "aerated concrete block" as appearing in the bridging paragraph of pages 9 and 10. Rather, applicants claim novelty in the combination of structural features set forth in article Claim 1, and of manipulative steps set forth in method Claim 20, only one feature of which includes aerated concrete blocks. It is submitted that the combination of structural features as set forth in independent Claim 1 and the combination of manipulative steps as set forth in independent Claim 20, particularly when using any of the known types of aerated concrete blocks, are not only novel, but also meet the requirements of 35 U.S.C. 103(a), since the modifications proposed by Examiner, if obvious at all, would have been obvious only in the light of applicants' disclosure. It is further submitted that even if such modifications were made as suggested by the Examiner, the results would not be the combination of features defined in article Claim 1, or the combination of manipulative steps defined in method Claim 20.

For the foregoing reasons, it is submitted that article Claim 1 and method Claim 20 are now clearly allowable over the cited references.

The remaining 2–19 all depend from article Claim 1 and are therefore submitted to be allowable with that claim for the same reasons as discussed above, apart from the further features set forth in the respective dependent claims.

Re the Rejection based on 35 U.S.C. 101

Claims 1 and 2 were rejected under 35 U.S.C. 101 as claiming the same invention as that of Claims 1–18 of prior US Patent 6,679,021. The Official Action further pointed out that this type double patenting rejection can be overcome by canceling or amending the conflicting claims “so they are no longer coextensive in scope”.

The previous response, to the Official Action of October 7, 2004 pointed that the claims in the present application are not “coextensive in scope” to the claims in the US Patent 6,679,021, and pointed out that the “double patenting” situation, if present at all in the present case, is not of the “statutory type”, but rather is of the “court created type” which can be overcome by a Terminal Disclaimer. The previous response therefore enclosed a Terminal Disclaimer to overcome this “double patenting” rejection.

It is submitted that the claims in the present application, even before the present amendments, were not “coextensive in scope” to the claims in US Patent 6,679,021. This is believed to be apparent by merely comparing Claim 1 of the present application with Claim 1 of the US Patent. Thus, Claim 1 of the present application, even before that claim was amended, did not include the feature recited in the last three lines of Claim 1 of the US Patent, namely that the aerated concrete blocks are “contiguously placed in direct contact with each other and secured together within the modular wall segment solely by said walling sheets”. It is believed this would have been sufficient to show that the two claims are not “coextensive in scope”.

Claim 1, however, has been amended to even more sharply distinguish over Claim 1 of US Patent 6,679,021 by the recitation that each of the plurality of aerated concrete blocks is bonded on its opposite faces to the first and second walling sheets, which limitation was not included in Claim 1 of the US Patent.

For the foregoing reasons, it is believed that the “double patenting” situation, if present at all in the present case, is not of the “statutory type” referred to in the Official Action, but rather is of the “court created type”, and therefore was overcome by the previously-filed Terminal Disclaimer.

In view of the foregoing, it is believed this application is now in condition for allowance, and an early Notice of Allowance is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin D. Moynihan". The signature is fluid and cursive, with the first name "Martin" and last name "Moynihan" clearly distinguishable.

Martin D. Moynihan
Registration No. 40,338

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